IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 571 OF 1997

Jayant Ramshankar Joshi ...Applicant.

v/s

Mahesh Priyawardhan Sapat
and anr. ...Respondents.

Mr. P.D. Desai with Mr. V.V. Vashi for the applicant.
Ms. Shilpa G. Joshi for Respondent No.1.
Mr. Rajesh More, APP for State/Respondent No.2.

CORAM: V.M. KANADE, J.

DATE: 13th January, 2006

P.C.:

1. Heard the learned Counsel appearing on behalf of the applicant, learned Counsel appearing on behalf of Respondent No.1 and the learned APP appearing on behalf of the State/Respondent No.2.

2. The applicant is the original accused in a complaint filed by respondent No.1 for the offence punishable under section 138 of the Negotiable Instruments Act read with section 420 of the Indian Penal Code. The process was issued by the learned Magistrate. Being aggrieved by the said order of issuance of process, the applicant has filed the present application under section 482 of the Criminal Procedure Code.

3. It is submitted that the entire proceeding, essentially, is of a civil nature and after having failed in the civil proceedings, the present complaint has been filed against the applicant. The applicant is also challenging issuance of search warrant. It is submitted that the learned Counsel had erred in issuing the search warrant.

4. A perusal of the complaint discloses that the allegation is made against the accused for issuing bogus cheques. It is alleged that two cheques were issued and both these cheques were dishonoured. It is alleged that both these cheques have been signed by the accused. It is further alleged that a demand notice was issued dated 21/8/1995 and the acknowledgment receipt was received by the complainant which indicated that statutory notice was received by the accused. It is alleged that the reply was given by the advocate of the accused dated 22/8/1995 in which false allegations were made. In para 8, it was alleged that the accused had also cheated the complainant.

5. So far as the contention of the learned Counsel appearing on behalf of the applicant that in view of

the agreement which was executed by the complainant and the accused the present complaint is not maintainable is concerned, this submission cannot be accepted. There is no reference in the Consent Terms regarding the withdrawal of criminal complaint by the complainant. Even otherwise it can be seen that the Consent Terms are dated 16/5/1996 and the complaint has been filed in September, 1995. It appears that the cheques which were issued by the accused pursuant to the said Consent Terms which were executed, were dishonoured and, therefore, the complainant had no other option but to file the complaint under section 420 of the Indian Penal Code and section 138 of the Negotiable Instruments Act. Therefore, the submissions of the learned counsel appearing for the applicant cannot be accepted.

6. So far as the order of issuance of search warrant is concerned, the Magistrate has observed that the accused had obtained signature of the complainant on the counterfoils of the cheques and on vouchers. The Magistrate observed that the accused neither denied that he had not obtained the signature of the complainant on the counterfoils nor did he deny that the documents are not in his possession. The Court has rightly observed that under section 91 of the

Criminal Procedure Code, the accused cannot be compelled to produce these alleged documents and, therefore, it was necessary to issue search warrant and bring the documents for trial to give an opportunity to the complainant to proceed with his case on merits.

7. In my view, there is no error committed by the learned Magistrate in passing the said order. It is a settled position in law that the accused cannot be compelled to produce the documents which are likely to be used against him. However, a search warrant can be issued during investigation for the purpose of securing these documents. Therefore, there is no reason to interfere with the order passed by the Magistrate. The Criminal Application is dismissed.

The trial is expedited.

V.M. KANADE, J.